

WALLACE E. MIERAS

IBLA 98-424

Decided December 22, 1999

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring mining claim null and void ab initio. ORMC 153824.

Set aside and remanded.

1. Mining Claims: Lands Subject To--Mining Claims:
Location--Mining Claims: Placer Claims

A placer mining claim located on land patented without a mineral reservation to the United States is properly declared null and void ab initio to the extent it includes such land. When the exact situs of the claim on the ground is unclear from the record and the claim may actually embrace land open to mineral entry, a decision finding the claim null and void ab initio will be set aside and the case remanded to BLM pending a determination of the actual position of the claim on the ground.

APPEARANCES: Wallace E. Mieras, Moxee, Washington, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Wallace E. Mieras has appealed the August 5, 1998, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Little Fraction placer mining claim (ORMC 153824) null and void ab initio. The basis for the BLM decision was that the claim embraced land patented out of Federal ownership and thus not subject to location under the mining laws.

Wallace E. Mieras and Geraldine T. Mieras located the Little Fraction claim on June 5, 1998. The location notice recorded in Kittitas County, Washington, on June 8, 1998, and filed with BLM on June 10, 1998, placed the claim in the SW¼ sec. 2, T. 21 N., R. 17 E., Willamette Meridian, Kittitas County, Washington. The location notice described the claim, which it identified as a fraction, as "[beginning] on Deer Gulch Road and [Forest Service (F.S.)] road #9726-119, proceed N Westerly 600' to forest service boundary. Thence N Easterly 800' along F.S. boundary. Thence Southerly to point of [beginning]."

By notice dated June 16, 1998, BLM advised the locators that they needed to submit a map depicting the claim in order to complete their mining claim filing. The Mierases provided the required map on June 26, 1998. That map, however, appeared to position the claim in sec. 11, not sec. 2. By letter dated July 1, 1998, BLM noted the discrepancy between the location notice's placement of the claim in sec. 2 and the map's siting of the claim in sec. 11. Further, BLM pointed out that the landmarks designated on the map could not be found anywhere in T. 21 N., R. 17 E., although they did exist in T. 20 N., R. 17 E. Hence, BLM asked the Mierases to confirm the correct township, range, and section location of the claim.

The Mierases responded by letter dated July 7, 1998, stating:

According to your map * * * this claim is in the SE $\frac{1}{4}$ of sec. 2 Twp 20, R 17.

However - ! This map has Deer Gulch almost a mile south of its real location; it has Williams Creek a $\frac{1}{4}$ mile north of its location.

The Wenatchee National Forest Woodcutters map that I used and find it is more realistic places this claim just barely in the NW $\frac{1}{4}$ of sec. 11.

I accept your map and ask that you please correct my location to sec. 2, Twp. 20, R. 17.

In its August 5, 1998, decision, BLM declared the Little Fraction placer mining claim situated in sec. 2, T. 20 N., R. 17 E., null and void ab initio because that land was not subject to location under the mining laws. Specifically, BLM found that the claim embraced land that had been patented out of Federal ownership on June 6, 1925, by patent No. 961023. That patent, a copy of which was enclosed with the decision, transferred, among other lands, the S $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 2, T. 20 N., R. 17 E., Willamette Meridian, to H.D. Harkness, excluding only mineral deposits known to exist on August 9, 1923.

On appeal, the Mierases deny that the Little Fraction claim is situated on the Harkness property, contending instead that the claim lies alongside the Blackjack claim which was patented on October 12, 1931. They provide a copy of the master title plat for the township and an aerial photograph. They have outlined the location of the Little Fraction claim on both of the documents. The location of the claim as shown on the master title plat is within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 2, outside the borders of any patented land.

[1] Mining claims may be located only on lands open to the operation of the Federal mining laws which are limited to "lands belonging to the United States." 30 U.S.C. § 22 (1994). Land patented without a mineral reservation to the United States is not available for mining claim

location, and a placer mining claim located on such conveyed land is null and void ab initio. William Solomon, 137 IBLA 68, 70 (1996); John Wright, 112 IBLA 233, 238 (1989); Kenneth Russell, 109 IBLA 180, 183 (1989).

Application of this settled law to the facts of this case is complicated by the confusion over the exact position of the Little Fraction claim on the ground. The claim location notice placed the claim in SW $\frac{1}{4}$ sec. 2, T. 21 N., R. 17 E., while the map depicting the claim sited it in sec. 11, not sec. 2. Upon receipt of BLM's letter noting this discrepancy and pointing out that the landmarks designated on the map existed in T. 20 N., R. 17 E., not T. 21 N., R. 17 E., the Mierases adopted the SE $\frac{1}{4}$ sec. 2, T. 20 N., R. 17 E., as the situs of their claim. The copy of the master title plat submitted on appeal positions the claim within unpatented Lot 9 in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 2, T. 20 N., R. 17 E. Under these circumstances, we must set aside BLM's August 5, 1998, decision and remand the case to determine the exact location of the claim on the ground. ^{1/} See United States Borax & Chemical Corp., 98 IBLA 358, 361 (1987); Leslie Corriea, 93 IBLA 346, 349 (1986); see also Outline Oil Corp., 95 IBLA 255, 258-59 (1987). In determining the location of the mining claim, its situs on the ground as disclosed by its monuments controls over a conflicting description in the location notice or placement on a map. See Outline Oil Corp., *supra*; Leslie Corriea, 93 IBLA at 349 n.3; Arley Taylor, 90 IBLA 313, 317-18 (1986). Once the claim's location has been determined, BLM may adjudicate the claim accordingly. See Leslie Corriea, 93 IBLA at 350.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is set aside and the case is remanded to BLM.

C. Randall Grant, Jr.
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

^{1/} It appears that in the process of prosecuting this appeal appellant has now properly related the location of the claim on the ground to the public land surveys. The locators may wish to file an amended notice of location reflecting the proper location of the claim on the ground in relation to the public land surveys.